

REMARKS/ARGUMENTS

The Examiner is requiring restriction to one of the following groups:

- Group I: Claims 1-5, drawn to a silicon dioxide powder with a hydroxyl group density of 2.5 to 4.7 OH/nm²;
- Group II: Claims 6-7, drawn to a process for producing silicon dioxide powder with a hydroxyl group density of less than 2.5 OH/nm²;
- Group III: Claims 8-14, drawn to an aqueous dispersion comprising a silicon dioxide powder with a hydroxyl group density of 2.5 to 4.7 OH/nm²;
- Group IV: Claim 15, drawn to a method of producing a coating comprising an aqueous dispersion with a silicon dioxide powder with a hydroxyl group density of 2.5 to 4.7 OH/nm²;
- Group V: Claim 16, drawn to a method of producing a polishing comprising an aqueous dispersion with a silicon dioxide powder with a hydroxyl group density of 2.5 to 4.7 OH/nm²;
- Group VI: Claim 17, drawn to a method of producing a glass comprising an aqueous dispersion with a silicon dioxide powder with a hydroxyl group density of 2.5 to 4.7 OH/nm²; and
- Group VII: Claim 18, drawn to a method of producing a sol-gel comprising an aqueous dispersion with a silicon dioxide powder with a hydroxyl group density of 2.5 to 4.7 OH/nm²;

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (MPEP §803). Moreover, when citing lack of unity of invention in a national stage application, the Examiner has the burden of explaining why each group lacks unity with the others (MPEP § 1893.03(d)), i.e. why a single general inventive concept is nonexistent. The lack of a single inventive concept must be specifically described.

The Examiner has argued that Groups II and the remaining groups are not linked to form a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same special technical feature for the following reason: "... a silicon dioxide powder with a hydroxyl group density of 2.5 to 4.7 OH/nm² is not shared by the groups and lacks unity."

Furthermore, the Examiner has argued that Group I and Groups III–VII are not linked to form a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same special technical feature for the following reason: “... a silicon dioxide powder with a hydroxyl group density of 2.5 to 4.7 OH/nm² is not novel over the prior art. Humbert (“Estimation of hydroxyl density at the surface of pyrogenic silicas by complementary NMR and Raman experiments.” JOURNAL OF NON-CRYSTALLINE SOLIDS (1995), 191, 29-37) teaches a silicon dioxide powder with a hydroxyl group density of 4.0 OH/nm².”

However, Annex B of the Administrative Instructions under the PCT, paragraph b (Technical Relationship), states:

“The expression “special technical feature” is defined in Rule 13.2 as meaning those technical features that defines a contribution which each of the inventions, considered as a whole, makes over the prior art. The determination is made on the contents of the claims as interpreted in light of the description and drawings (if any).”

Applicants contend that the Examiner did not consider the contribution of the invention, as a whole, over the disclosure of the cited reference, which relates to unifying experimental procedures for predicting the hydroxyl content in silicas. The present disclosure does not relate to the motivation of the cited reference. Therefore, the Examiner has not met the burden necessary to support the assertion of a lack of unity of the invention.

Applicants also traverse that Restriction Requirement on the grounds that the Office has not applied the same standard of unity of invention as the International Preliminary Examination Authority (a copy of the International Preliminary Examination Report as submitted on December 9, 2003, is **submitted herewith** for the Examiner’s convenience). The Authority did not take the position that unity of invention was lacking in the International application and examined all claims together. Applicants note that PCT Article 27(1) states:

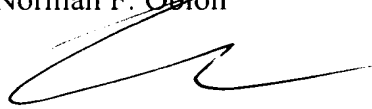
No national law shall require compliance with requirements relating to the form or contents of the international application different from or additional to those which are provided for in this Treaty and the Regulations.

For the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the requirement for restriction. Applicants therefore request that the requirement for restriction be withdrawn.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice thereof is earnestly solicited.

Respectfully Submitted,

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